

# State of Wisconsin



1997 Assembly Bill 831

Date of enactment: **June 30, 1998**

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## 1997 WISCONSIN ACT 316

AN ACT *to renumber and amend* 551.21 (1), 551.31 (1m), 551.31 (2) (a), 551.32 (1) (d), 551.34 (6) and 551.52 (1) (b); *to amend* 551.02 (2) (intro.), (a) and (b), 551.02 (7) (intro.), 551.02 (7) (a), 551.02 (7) (b), 551.02 (7) (c), 551.02 (7) (d), 551.02 (7) (e), 551.02 (12), subchapter II (title) of chapter 551 [precedes 551.21], 551.22 (7), 551.23 (3) (intro.), 551.23 (3) (a), 551.23 (3) (b), 551.23 (3) (c), 551.23 (8) (b) and (c), 551.23 (16), 551.23 (19) (a), 551.23 (19) (b), 551.23 (19) (d), 551.25 (1), 551.25 (2) (intro.), 551.25 (2) (a), 551.25 (2) (b), 551.25 (2) (c), subchapter III (title) of chapter 551 [precedes 551.31], 551.31 (title), 551.31 (2) (d), 551.32 (title), 551.32 (1) (a), 551.32 (1) (b), 551.32 (3), 551.32 (4), 551.33 (1), 551.33 (2), 551.33 (3), 551.33 (4), 551.34 (1) (b), 551.34 (1) (f), 551.34 (5), 551.44, 551.52 (1) (a), 551.52 (2), 551.53 (1) (b), 551.55, 551.63 (1), (2) and (3), 551.64 (2) and (3) and 551.65 (1); *to repeal and recreate* 551.31 (1), 551.31 (3), 551.31 (4) and 551.32 (5) and (6); and *to create* 220.32, 551.02 (4g), 551.02 (4r), 551.02 (7) (ed) and (eh), 551.02 (7) (em), 551.02 (7m), 551.21 (1) (c), 551.29, 551.31 (3m), 551.31 (4m), 551.32 (1m), 551.32 (8), 551.32 (9) (b), 551.33 (8) and 551.52 (1) (b) 2. of the statutes; **relating to**: the regulation of investment advisers and investment adviser representatives, the registration of securities, transfers of trust business within bank holding company systems and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1e.** 220.32 of the statutes is created to read:

**220.32 Transfer of trust business within bank holding company groups.** (1) **DEFINITIONS.** In this section:

(a) "Corporate fiduciary" means all of the following:

1. A trust company bank, state bank with trust powers, corporation or limited liability company, that is authorized under the laws of this state to accept and execute trusts.

2. A national bank or other federally chartered financial institution, if that bank or institution has its principal place of business in this state and is authorized by the appropriate federal agency to accept and execute trusts.

(b) "Subsidiary" of a bank holding company means any other corporation or limited liability company of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by the bank holding company.

(c) "Trust business" includes self-declared trusts that are established and maintained by a corporate fiduciary, such as common trust funds and group trust funds, and all other activities in which a corporate fiduciary is acting as a fiduciary, as defined in s. 112.01 (1) (b), regardless of whether or not a portion of these activities could be undertaken by an entity that is not authorized to accept and execute trusts in this state.

(2) **TRANSFER TO SUCCESSOR FIDUCIARY.** If the board of directors of a bank holding company adopt a resolution directing one of its subsidiaries that is a corporate fidu-

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

ciary to succeed to all or part of the existing or future trust business of another of its subsidiaries that is a corporate fiduciary, the successor corporate fiduciary shall succeed to the predecessor corporate fiduciary. The substitution shall be effective on the date specified in the resolution and no additional authorization is needed. The successor corporate fiduciary shall succeed to all capacities in which the predecessor corporate fiduciary had been acting with respect to the transferred trust business. If, or to the extent that, the resolution directs that one subsidiary shall succeed to future trust business of another subsidiary of the same bank holding company, the successor shall be considered to be named as fiduciary in all writings that named the predecessor corporate fiduciary as trustee, including all wills, trusts, court orders and similar documents and instruments.

**SECTION 1m.** 551.02 (2) (intro.), (a) and (b) of the statutes are amended to read:

551.02 (2) (intro.) “Agent” means any individual other than a broker–dealer who represents a broker–dealer or issuer in effecting or attempting to effect transactions in securities. A partner, officer or director of a broker–dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent if he or she is within this definition. “Agent” does not include an individual who represents an issuer in doing any of the following:

(a) Effecting transactions in a security exempted by s. 551.22;

(b) Effecting transactions exempted by s. 551.23, other than transactions exempted under s. 551.23 (8) (g), (10) or (19) in which the individual receives a commission or other remuneration directly or indirectly for soliciting or selling to any person in this state;

**SECTION 2.** 551.02 (4g) of the statutes is created to read:

551.02 (4g) “Federal covered adviser” means a person who is registered under section 203 of the Investment Advisers Act of 1940.

**SECTION 3.** 551.02 (4r) of the statutes is created to read:

551.02 (4r) “Federal covered security” means any security that is a covered security under section 18 (b) of the Securities Act of 1933 or regulations promulgated under that act.

**SECTION 4.** 551.02 (7) (intro.) of the statutes is amended to read:

551.02 (7) (intro.) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. “Investment adviser” does not include any of the following:

**SECTION 5.** 551.02 (7) (a) of the statutes is amended to read:

551.02 (7) (a) A bank, savings institution or trust company;

**SECTION 6.** 551.02 (7) (b) of the statutes is amended to read:

551.02 (7) (b) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his or her profession;

**SECTION 7.** 551.02 (7) (c) of the statutes is amended to read:

551.02 (7) (c) A broker–dealer or agent whose performance of these services is solely incidental to the conduct of his or her business as a broker–dealer or agent and who receives no special compensation for them;

**SECTION 8.** 551.02 (7) (d) of the statutes is amended to read:

551.02 (7) (d) A publisher of any bona fide newspaper, news magazine or business or financial publication with a regular and paid circulation or a publisher of any securities advisory newsletter with a regular and paid circulation which does not provide advice to subscribers on their specific investment situation;

**SECTION 9.** 551.02 (7) (e) of the statutes is amended to read:

551.02 (7) (e) The investment board;

**SECTION 10.** 551.02 (7) (ed) and (eh) of the statutes are created to read:

551.02 (7) (ed) A federal covered adviser, unless the federal covered adviser is required to become licensed or qualify for an exclusion or exemption from licensure under s. 551.32 (1m) (c).

(eh) A person who is excluded from the definition of “investment adviser” under section 202 (a) (11) of the Investment Advisers Act of 1940.

**SECTION 11.** 551.02 (7) (em) of the statutes is created to read:

551.02 (7) (em) An investment adviser representative.

**SECTION 12.** 551.02 (7m) of the statutes is created to read:

551.02 (7m) (a) “Investment adviser representative” means any of the following, unless excluded under paragraph (b):

1. A supervised person, as defined by the division by rule, of an investment adviser or a federal covered adviser, unless one of the following applies:

a. Not more than a percentage, specified by the division by rule, of the clients of the supervised person are natural persons who are not excepted persons, as defined by the division by rule.

b. The supervised person does not, on a regular basis, solicit, meet with or otherwise communicate with clients of the investment adviser or federal covered adviser.

c. The supervised person provides only impersonal investment advice, as defined by the division by rule.

2. A 3rd-party solicitor, as defined by the division by rule.

(b) "Investment adviser representative" does not include any person excluded by the division by rule or order.

**SECTION 13.** 551.02 (12) of the statutes is amended to read:

551.02 (12) "~~Securities act Act of 1933~~", "~~securities exchange act Securities Exchange Act of 1934~~", "~~investment company act Investment Company Act of 1940~~", "~~investment advisers act Investment Advisers Act of 1940~~" and "~~internal revenue code Internal Revenue Code~~" mean the federal statutes of those names as amended on January 1, 1970 1998, including such later amendments as the division determines are not inconsistent with the purpose of this chapter.

**SECTION 14.** Subchapter II (title) of chapter 551 [precedes 551.21] of the statutes is amended to read:

#### CHAPTER 551

##### SUBCHAPTER II

##### REGISTRATION OF AND

##### NOTICE FILING PROCEDURES:

##### SECURITIES

**SECTION 15.** 551.21 (1) of the statutes is renumbered 551.21 (1) (intro.) and amended to read:

551.21 (1) (intro.) It is unlawful for any person to offer or sell any security in this state unless it at least one of the following conditions is met:

(a) The security is registered under this chapter ~~or~~ the.

(b) The security or transaction is exempted under s. 551.22 or 551.23.

**SECTION 16.** 551.21 (1) (c) of the statutes is created to read:

551.21 (1) (c) The security is a federal covered security.

**SECTION 17.** 551.22 (7) of the statutes is amended to read:

551.22 (7) Any security listed, or approved for listing upon notice of issuance, on ~~the New York stock exchange, the American stock exchange, or a securities exchange designated by rule of the division; any security designated, or approved for designation upon notice of issuance, as a national market system security by the national association of securities dealers, inc.,~~ subject to rules that the division may promulgate under this subsection; any security of the same issuer which is of senior or substantially equal rank to the security listed, designated or approved for listing or designation; any security called for by subscription rights or warrants so listed, approved or designated; or any warrant or right to purchase or subscribe to any of the foregoing.

**SECTION 18.** 551.23 (3) (intro.) of the statutes is amended to read:

551.23 (3) (intro.) Any sale of any outstanding security by or on behalf of a person not the issuer and not in con-

trol of the issuer or controlled by the issuer or under common control with the issuer at a price reasonably related to the current market price if any of the following conditions are met:

**SECTION 19.** 551.23 (3) (a) of the statutes is amended to read:

551.23 (3) (a) The issuer has any securities registered under section 12 of the ~~securities exchange act~~ Securities Exchange Act of 1934 or exempted from registration by section 12 (g) (2) (G) or 12 (g) (3) of that act, or the issuer is an investment company registered under the ~~investment company act~~ Investment Company Act of 1940; ~~or,~~

**SECTION 20.** 551.23 (3) (b) of the statutes is amended to read:

551.23 (3) (b) Securities of the same class have been registered under this chapter under a registration statement becoming effective within 2 years preceding the sale and the registration has not been revoked or suspended; ~~or,~~

**SECTION 21.** 551.23 (3) (c) of the statutes is amended to read:

551.23 (3) (c) Securities of the same class have been registered under the ~~securities act~~ Securities Act of 1933 and there is filed with the division prior to any offer or sale a notice of the proposed sale, other information as the division by rule requires and any additional information required under s. 551.24 (6), and the division does not by order disallow the exemption within 10 days after the date of filing the notice or, if additional information is required under s. 551.24 (6), within 10 days after the date of filing that information; ~~or,~~

**SECTION 22.** 551.23 (8) (b) and (c) of the statutes are amended to read:

551.23 (8) (b) A bank, savings institution, savings bank, credit union, trust company, insurer, broker-dealer, investment adviser, federal covered adviser or savings and loan association, if the purchaser or prospective purchaser is acting for itself or as trustee with investment control.

(c) An investment company as defined under 15 USC 80a-3 or a pension or profit-sharing trust, except that an offer or sale of a security to a pension or profit-sharing trust or to an individual retirement plan, including a self-employed individual retirement plan, is not exempt under this paragraph unless the trust or plan is administered by a bank, savings institution, savings bank, credit union, trust company, insurer, broker-dealer, investment adviser, federal covered adviser or savings and loan association that has investment control.

**SECTION 23.** 551.23 (16) of the statutes is amended to read:

551.23 (16) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the ~~securities act~~ Securities Act of 1933 if no stop order or denial order is in effect and no proceeding is pending under either law.

**SECTION 24.** 551.23 (19) (a) of the statutes is amended to read:

551.23 (19) (a) Any offer or sale of securities made in reliance on the ~~exemptions~~ exemption provided by Rule 505 ~~or 506~~ of Regulation D under the ~~securities act~~ Securities Act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder, if the offer or sale also satisfies the additional conditions and limitations in pars. (b) to (f).

**SECTION 25.** 551.23 (19) (b) of the statutes is amended to read:

551.23 (19) (b) No commission or other remuneration may be paid or given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under par. (a), except to broker-dealers and agents licensed in this state or exempt from licensure under s. 551.31 (1).

**SECTION 26.** 551.23 (19) (d) of the statutes is amended to read:

551.23 (19) (d) Not later than the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under par. (a), there is filed with the division a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the ~~securities act~~ Securities Act of 1933, a completed Form D as prescribed by Rule 503 of Regulation D under the ~~securities act~~ Securities Act of 1933, and a fee of \$200. Material amendments to the offering document shall be filed with the division not later than the date of their first use in this state.

**SECTION 27.** 551.25 (1) of the statutes is amended to read:

551.25 (1) Registration by coordination may be used for any security for which a registration statement has been filed under the ~~securities act~~ Securities Act of 1933 in connection with the same offering and has not become effective.

**SECTION 28.** 551.25 (2) (intro.) of the statutes is amended to read:

551.25 (2) (intro.) A registration statement under this section shall contain all of the following information and be accompanied by the following documents in addition to the information specified in s. 551.27 (2) and the consent to service of process required by s. 551.65 (1):

**SECTION 29.** 551.25 (2) (a) of the statutes is amended to read:

551.25 (2) (a) Three copies of the latest form of prospectus filed under the ~~securities act~~ Securities Act of 1933;

**SECTION 30.** 551.25 (2) (b) of the statutes is amended to read:

551.25 (2) (b) If the division by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

**SECTION 31.** 551.25 (2) (c) of the statutes is amended to read:

551.25 (2) (c) If the division requires, any other information, or copies of any documents, filed under the ~~securities act~~ Securities Act of 1933; and,

**SECTION 32.** 551.29 of the statutes is created to read:

**551.29 Federal covered securities.** (1) With respect to a federal covered security that is a covered security under section 18 (b) (2) of the Securities Act of 1933, the division may, by rule or order, require the filing of any of the following:

(a) Not later than the initial offer of the federal covered security in this state, a copy of each document that is part of its registration statement filed with the federal securities and exchange commission under the Securities Act of 1933, which may, at the option of the issuer, be accompanied by a form containing the information specified by the division by rule. If a filing is required under this paragraph, the filing shall be accompanied by a consent to service of process signed by the issuer and a notice filing fee under s. 551.52 (1) (a). Any notice filing required under this paragraph is effective upon receipt by the division of the documents and fees required under this paragraph, or upon the effectiveness of the registration statement under the Securities Act of 1933, whichever is later.

(b) After the initial offer of a federal covered security in this state, a copy of each document that is part of an amendment to its registration statement filed with the federal securities and exchange commission under the Securities Act of 1933, concurrent with the federal filing, which may, at the option of the issuer, be accompanied by a form containing the information specified by the division by rule. If a filing is required under this paragraph and the amendment relates either to a name change of the issuer, or a change in the designation of the federal covered security, the filing shall be accompanied by a fee in the amount prescribed by the rule or order requiring the filing. Unless the issuer requests a later effective date, an amendment filing required under this paragraph is effective upon receipt by the division of the documents and fees required under this paragraph.

(c) For a unit investment trust or closed-end investment company to extend its offering beyond a one-year period, a notice of extension, together with any filing fee

prescribed by rule or order, at the time prescribed by rule or order.

(1m) If the division promulgates rules under sub. (1) (c) for unit investment trusts or closed-end investment companies, the division shall restate in those rules the statutory annual reporting and fee requirements that are applicable to an open-end management company or a face amount certificate company under s. 551.52 (1) (b) 2.

(2) With respect to a federal covered security that is a covered security under section 18 (b) (4) (D) of the Securities Act of 1933, the division may, by rule or order, require the issuer to file a notice consisting of a completed Form D as prescribed by Rule 503 of Regulation D under the Securities Act of 1933, signed by the issuer, not later than 15 days after the first sale of the federal covered security in this state. Any filing required under this subsection shall be accompanied by a fee in the amount prescribed by the rule or order requiring the filing. The filing shall be effective upon receipt by the division of the filing and the fee.

(3) With respect to a federal covered security that is a covered security under section 18 (b) (3) or (4) of the Securities Act of 1933, the division may, by rule or order, require the filing, for purpose of providing notice to the division, of any document filed with the federal securities and exchange commission under the the Securities Act of 1933, together with a fee prescribed in the rule or order. The filing is effective upon receipt by the division of the documents and fee required under the rule or order.

(4) To the extent not prohibited by federal law, if the issuer of a federal covered security does not pay a fee required under this chapter with respect to that security and the nonpayment or underpayment of that fee has not been remedied within 10 days of receipt by the issuer of a written or electronically transmitted notification from the division, the federal covered security may not be offered or sold in this state unless it is registered under this chapter or qualifies for an exemption from registration under s. 551.22 or 551.23.

(5) The division may issue an order suspending offers and sales of a federal covered security in this state, except a federal covered security under section 18 (b) (1) of the Securities Act of 1933, if the order is in the public interest and the division has reason to believe that there has been a failure to comply with this section or a rule or order issued under this section. The division may issue an order suspending offers and sales of a federal covered security in this state if the order is in the public interest and the division has reason to believe that the security is being or has been offered or sold in this state in violation of s. 551.41.

(6) The division may, by rule or order, waive any requirement under this section or under rules promulgated, or orders issued, under this section.

**SECTION 33.** Subchapter III (title) of chapter 551 [precedes 551.31] of the statutes is amended to read:

**CHAPTER 551**

**SUBCHAPTER III**

**LICENSING OF AND NOTICE FILING  
PROCEDURES; BROKER-DEALERS,  
AGENTS AND, INVESTMENT ADVISERS AND  
INVESTMENT ADVISER REPRESENTATIVES**

**SECTION 34.** 551.31 (title) of the statutes is amended to read:

**551.31 (title) Licensing requirement and notice filing requirements.**

**SECTION 35.** 551.31 (1) of the statutes is repealed and recreated to read:

551.31 (1) Unless exempt from licensing under this subsection, it is unlawful for any person to transact business in this state as a broker-dealer unless licensed under this chapter as a broker-dealer. Unless exempt from licensing under this subsection, it is unlawful for any person to transact business in this state as an agent unless licensed under this chapter as an agent. All of the following persons are exempt from licensing under this subsection:

(c) A person who represents a broker-dealer in effecting transactions, if the person meets the requirements under section 15 (h) (2) of the Securities Exchange Act of 1934 and the person's transactions in this state are limited to those transactions described in section 15 (h) (3) of the Securities Exchange Act of 1934.

**SECTION 36.** 551.31 (1m) of the statutes is renumbered 551.31 (1) (a) and amended to read:

551.31 (1) (a) A person who effects transactions in this state exclusively for the account of or exclusively in offers to sell or sales to persons specified in s. 551.23 (8) (a) to (f) ~~is not required to be licensed under this chapter as a broker-dealer or agent.~~

~~(b) A person who gives a group presentation relating to an issuer or the securities of an issuer at a meeting or seminar sponsored by a broker-dealer licensed under this chapter is not required to be licensed under this chapter as an agent, if the person makes no solicitations, offers or sales of the issuer's securities on an individual basis with any person in this state and if the person does not in any other way transact business in this state as an agent.~~

**SECTION 37.** 551.31 (2) (a) of the statutes is renumbered 551.31 (2) (a) (intro.) and amended to read:

551.31 (2) (a) (intro.) It is unlawful for any broker-dealer or issuer to employ an agent to represent it in this state unless the at least one of the following conditions is met:

1. The agent is licensed for that broker-dealer or issuer in this state, the,

2. The agent is excluded ~~exempted~~ from the licensing requirement under sub. (1m) or the (1).

3. The agent is not required under sub. (7) to obtain a separate license to represent that issuer.

**SECTION 38.** 551.31 (2) (d) of the statutes is amended to read:

551.31 (2) (d) When an agent who is required to be licensed under sub. (1) terminates employment with a broker–dealer or issuer, or terminates those activities which make that individual an agent, or transfers employment between licensed broker–dealers, the agent, the broker–dealer or the issuer shall promptly file a notice in accordance with rules adopted by the division.

**SECTION 39.** 551.31 (3) of the statutes is repealed and recreated to read:

551.31 (3) Unless exempt from licensing under this subsection, it is unlawful for a person to transact business in this state as an investment adviser unless licensed under this chapter as an investment adviser. All of the following persons are exempt from licensing under this subsection:

(a) A person who is licensed as a broker–dealer under this chapter.

(b) A person whose only clients in this state are persons described under s. 551.23 (8) (a) to (f).

(c) A person who has no place of business in this state and, during the preceding 12–month period, has not had more than 5 clients who are residents of this state, exclusive of clients described under s. 551.23 (8) (a) to (f).

**SECTION 39m.** 551.31 (3m) of the statutes is created to read:

551.31 (3m) Unless exempt from licensing under this subsection, it is unlawful for a person to transact business in this state as an investment adviser representative for an investment adviser unless licensed under this chapter as an investment adviser representative. All of the following persons are exempt from licensing under this subsection:

(a) A person who is licensed as an agent under this chapter.

(b) A person whose only clients in this state are persons described under s. 551.23 (8) (a) to (f).

(c) A person who has no place of business in this state and, during the preceding 12–month period, has not had more than 5 clients who are residents of this state, exclusive of clients described under s. 551.23 (8) (a) to (f).

**SECTION 40.** 551.31 (4) of the statutes is repealed and recreated to read:

551.31 (4) (a) It is unlawful for any investment adviser who is required to be licensed under this chapter to employ an investment adviser representative to represent the investment adviser in this state, unless the investment adviser representative either is licensed for that investment adviser in this state or is a person described under sub. (3m) (a), (b) or (c).

(b) It is unlawful for any person having a place of business located in this state who is employed or supervised by, or is associated with, a federal covered adviser,

to act as an investment adviser representative in this state, unless the investment adviser representative either is licensed in this state or is a person described under sub. (3m) (a), (b) or (c).

(c) 1. When an investment adviser representative licensed in this state employed by an investment adviser who is required to be licensed under this chapter terminates his or her employment, the investment adviser shall promptly file a notice with the division in accordance with rules promulgated by the division.

2. When an investment adviser representative licensed in this state employed by a federal covered adviser terminates his or her employment, the investment adviser representative shall promptly file a notice with the division in accordance with rules promulgated by the division.

**SECTION 41.** 551.31 (4m) of the statutes is created to read:

551.31 (4m) It is unlawful for any federal covered adviser to transact investment advisory business in this state unless one of the following conditions is met:

(a) The federal covered adviser’s only clients who are residents of this state are described under s. 551.23 (8) (a) to (f).

(b) The federal covered adviser has no place of business in this state, and, during the preceding 12–month period, the adviser has not had more than 5 clients who are residents of this state, exclusive of clients described under s. 551.23 (8) (a) to (f).

(c) The federal covered adviser has complied with the notice filing provisions under s. 551.32 (1m).

**SECTION 42.** 551.32 (title) of the statutes is amended to read:

**551.32 (title) Licensing and notice filing procedure.**

**SECTION 43.** 551.32 (1) (a) of the statutes is amended to read:

551.32 (1) (a) A broker–dealer, agent ~~or~~ investment adviser ~~or investment adviser representative~~ may obtain an initial or renewal license by filing with the division, or an organization which the division by rule designates, an application together with a consent to service of process under s. 551.65 (1).

**SECTION 44.** 551.32 (1) (b) of the statutes is amended to read:

551.32 (1) (b) An application under par. (a) shall contain whatever information the division by rule requires concerning the applicant’s form and place of organization, proposed method of doing business and financial condition, the qualifications and ~~experience~~ business history of the applicant, including, in the case of a broker–dealer or investment adviser, the qualifications and ~~experience~~ business history of any partner, officer, director, ~~or any person occupying a similar status or performing similar functions~~ or any controlling person, any injunction or administrative order or conviction of a misdemeanor

involving securities and any conviction of a felony, and any other matters which the division determines are relevant to the application. The division may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

**SECTION 45.** 551.32 (1) (d) of the statutes is renumbered 551.32 (1s) and amended to read:

551.32 (1s) The division shall cooperate with other securities administrators and regulatory authorities to simplify and coordinate license application, notice filing and renewal procedures.

**SECTION 46.** 551.32 (1m) of the statutes is created to read:

551.32 (1m) (a) If required under s. 551.31 (4m), a federal covered adviser shall file with the division a notice filing together with the fee prescribed under s. 551.52 (2). The notice filing shall consist either of a notice filing form prescribed by the division by rule or a copy of those documents that have been filed with the federal securities and exchange commission as the division, by rule or order, may require.

(b) An initial notice filing is effective upon receipt by the division of the documents and fee required in par. (a). A renewal notice filing is effective upon the expiration under sub. (8) (a) of the prior notice filing, or upon receipt by the division of the documents and fee required under par. (a), whichever is later.

(c) To the extent not prohibited by federal law, a federal covered adviser, for whom a nonpayment or underpayment of any required fee to the division has not been remedied within 10 days of the receipt by the adviser of written notification from the division of the nonpayment or underpayment, shall either become licensed or qualify for an exclusion or exemption from licensure. The written notification by the division under this paragraph may be transmitted electronically.

**SECTION 47.** 551.32 (3) of the statutes is amended to read:

551.32 (3) A licensed broker-dealer or investment adviser may file an application for licensing of a successor, and a federal covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

**SECTION 48.** 551.32 (4) of the statutes is amended to read:

551.32 (4) The division may by rule prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, ~~as well as persons who represent or will represent an investment adviser,~~ and the division may by order require an examination of a licensed broker-dealer, agent ~~or~~ investment adviser or investment adviser representative for due cause.

**SECTION 49.** 551.32 (5) and (6) of the statutes are repealed and recreated to read:

551.32 (5) The division may, by rule or order, establish a minimum net capital requirement for licensed broker-dealers, subject to the limitations of section 15 of the Securities Exchange Act of 1934 and may establish a minimum net capital requirement for licensed investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940.

(6) The division may, by rule or order, require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities, to post bonds in amounts as the division may prescribe by rule or order, subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine the conditions of the bonds. No bond may be required of any licensee whose net capital exceeds the amount prescribed by rule or order of the division. Every bond required by rules promulgated under this subsection shall provide for suit on the bond by any person who has a cause of action under s. 551.59 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond required by rules promulgated under this subsection shall provide that no suit may be maintained to enforce any liability on the bond unless the suit is brought within the time limitations of s. 551.59 (5).

**SECTION 50.** 551.32 (8) of the statutes is created to read:

551.32 (8) (a) Every license or notice filing under this section expires on December 31 unless one of the following occurs:

1. The license or notice filing is renewed.
2. The license or notice filing is limited or extended for not more than 6 months, and the licensee or notice filer pays a fee, adjusted proportionately by the division by rule or order.
3. The division specifies a different expiration date by rule or order.

(b) No license or notice filing under this section is effective after its expiration. The expiration of a license or notice filing for which a renewal application has not been filed constitutes an application for withdrawal under sub. (9).

**SECTION 51.** 551.32 (9) (b) of the statutes is created to read:

551.32 (9) (b) Termination of a notice filing under s. 551.32 (1m) is effective upon receipt by the division of written notification of termination.

**SECTION 52.** 551.33 (1) of the statutes is amended to read:

551.33 (1) Every licensed broker-dealer, agent and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other

records which the division ~~by rule prescribes by rule or order, subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers.~~ All records required shall be preserved for 3 years ~~unless the division by rule prescribes otherwise for particular types of records the period prescribed by the division by rule or order.~~ All required records shall ~~be kept within this state or shall, at the request of the division, be made available at any time for examination by the division either in the principal office of the licensee or by production of exact copies thereof in this state.~~

**SECTION 53.** 551.33 (2) of the statutes is amended to read:

551.33 (2) Every licensed broker-dealer and investment adviser shall file such reports as the division ~~by rule prescribes by rule or order, subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers.~~

**SECTION 54.** 551.33 (3) of the statutes is amended to read:

551.33 (3) If the information contained in any application for a license or other document filed with the division or an organization designated under s. 551.32 (1) (a) is or becomes inaccurate or incomplete in any material respect, the licensee filing the application or document shall promptly file a correcting amendment, except that a federal covered adviser shall file a correcting amendment when it is required to be filed with the securities and exchange commission, unless notification of the correction has been given under s. 551.32 (9) (a).

**SECTION 55.** 551.33 (4) of the statutes is amended to read:

551.33 (4) The division shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as the division determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the division by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the division, insofar as it is practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the ~~securities exchange act~~ Securities Exchange Act of 1934. The division shall not make public the information obtained in the course of examinations, except when the division's duty under this chapter requires the division to take action regarding any

broker-dealer or investment adviser or to make the information available to one of the organizations specified in this subsection, or except when called as a witness in any criminal or civil proceeding.

**SECTION 56.** 551.33 (8) of the statutes is created to read:

551.33 (8) With respect to investment advisers, the division may, by rule or order, require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. If the division promulgates rules or issues orders under this subsection requiring that information be furnished or disseminated, the division may, in its discretion, permit investment advisers to satisfy requirements of these rules or orders in whole or in part by furnishing clients or prospective clients information that would satisfy the requirements of the Investment Advisers Act of 1940.

**SECTION 57.** 551.34 (1) (b) of the statutes is amended to read:

551.34 (1) (b) Has wilfully violated or wilfully failed to comply with any provision of this chapter or a predecessor law or the ~~securities act~~ Securities Act of 1933, the ~~securities exchange act~~ Securities Exchange Act of 1934, the ~~investment advisers act~~ Investment Advisers Act of 1940, the ~~investment company act~~ Investment Company Act of 1940, or any rule under any of such statutes or any order thereunder of which he or she has notice;

**SECTION 58.** 551.34 (1) (f) of the statutes is amended to read:

551.34 (1) (f) Is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking the person's registration or license as a broker-dealer, agent ~~or~~ investment adviser or federal covered adviser, or is the subject of an order of the securities and exchange commission or of a securities exchange or association registered under the ~~securities exchange act~~ Securities Exchange Act of 1934 suspending or expelling such person from a securities exchange or association or forbidding the association or affiliation of the person with a broker-dealer or investment adviser, or is the subject of a U.S. postal service fraud order. The division may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and the division may not enter an order under this paragraph on the basis of an order under another state law or federal law unless the order was based on facts which would currently constitute a ground for an order under this section;

**SECTION 59.** 551.34 (5) of the statutes is amended to read:

551.34 (5) If the division finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent ~~or~~ investment adviser or investment adviser representative, or is subject to an



adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the division may on order issued summarily revoke the license or deny the application.

**SECTION 60.** 551.34 (6) of the statutes is renumbered 551.32 (9) (a) and amended to read:

551.32 (9) (a) Withdrawal from the status of a licensed broker-dealer, agent ~~or~~ investment adviser or investment adviser representative becomes effective 30 days after receipt by the division or by an organization designated by rule of the division under s. 551.32 (1) (a) of an application to withdraw or within such shorter period as the division determines, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the division by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the division may institute a revocation or suspension proceeding for the grounds specified under sub. (1) (b), (g), (m) or (n) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

**SECTION 61.** 551.44 of the statutes is amended to read:

**551.44 Advisory activities.** It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, in this state, to employ any device, scheme or artifice to defraud the other person; or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person; ~~or take or have custody of any securities or funds of any client unless the adviser is licensed as a broker-dealer under this chapter.~~ The division may adopt rules defining the terms used in this section.

**SECTION 62.** 551.52 (1) (a) of the statutes is amended to read:

551.52 (1) (a) There shall be a filing fee of \$750 for every registration statement filed under s. 551.25 or 551.26, and for every notice filing under s. 551.29 (1) (a). ~~When~~ If a registration statement is denied or withdrawn before the effective date or a pre-effective stop order is entered under s. 551.28, or a notice filing is withdrawn, the filing fee shall be retained.

**SECTION 63.** 551.52 (1) (b) of the statutes is renumbered 551.52 (1) (b) 1. and amended to read:

551.52 (1) (b) 1. An indefinite amount of securities shall be registered for offer and sale in this state under a registration statement relating to redeemable securities

issued by an open-end management company or a face amount certificate company, as defined in the ~~investment company act~~ Investment Company Act of 1940, and the applicant shall pay the fee under par. (a). The registrant also shall, within 60 days after the end of each fiscal year during which its registration statement is effective and within 60 days after the registration is terminated, file a report on a form prescribed by rule of the division ~~in which.~~ The form shall require the registrant does any to do one of the following:

a. ~~Elects~~ Elect not to report include the information under subd. 2. ~~1. b.~~ and instead ~~pays~~ pay a fee of \$1,500.

b. ~~Reports~~ Report the amount of securities sold to persons in this state during the preceding fiscal year or, if the registration is terminated, during the portion of the preceding fiscal year during which the registration was effective, and ~~pays~~ pay a fee of 0.05% of the dollar amount of the securities sold to persons in this state, but not less than \$150 nor more than \$1,500.

**SECTION 64.** 551.52 (1) (b) 2. of the statutes is created to read:

551.52 (1) (b) 2. An indefinite amount of securities is eligible for offer and sale in this state resulting from a notice filing under s. 551.29 (1) (a) for the initial offer of a federal covered security under section 18 (b) (2) of the Securities Act of 1933, if the filing party has notified the division of the issuer's fiscal year, and the filing party pays the fee under par. (a). The filing party shall also, within 90 days after the end of each fiscal year following the filing under s. 551.29 (1) (a), and within 90 days after sales in this state have terminated, file a report to allow the division to determine that the amount of the fee paid is correct. The report shall be on a form prescribed by rule of the division and shall require the filing party to do one of the following:

a. Elect not to include the information under subd. 2. b. and instead pay a fee of \$1,500.

b. Report the amount of securities sold to persons in this state during the preceding fiscal year or, if sales have terminated, during the portion of the preceding fiscal year during which sales were made, and pay a fee of 0.05% of the dollar amount of the securities sold to persons in this state, but not less than \$150 nor more than \$1,500.

**SECTION 65.** 551.52 (2) of the statutes is amended to read:

551.52 (2) Every applicant for an initial or renewal license under s. 551.32 shall pay a filing fee of \$200 in the case of a broker-dealer, or investment adviser and \$30 in the case of an agent representing a broker-dealer or issuer or ~~a person representing an investment adviser, and \$200 in the case of an investment adviser representative.~~ Every federal covered adviser in this state that is required to make a notice filing under s. 551.32 (1m) shall pay an initial or renewal notice filing fee of \$200. A broker-dealer ~~or~~ investment adviser, or federal covered adviser

maintaining a branch office within this state shall pay an additional filing fee of \$30 for each branch office. When an application is denied, or an application or a notice filing is withdrawn, the filing fee shall be retained.

**SECTION 66.** 551.53 (1) (b) of the statutes is amended to read:

551.53 (1) (b) That has not been filed with the division not later than the date of publication or circulation, except for advertising relating to a federal covered security or except as the division may otherwise provide by rule or order.

**SECTION 67.** 551.55 of the statutes is amended to read:

**551.55 Unlawful representations.** Neither the fact that a notice filing, registration statement or an application for a license has been filed nor the fact that a security is effectively registered or a person is licensed constitutes a finding by the division that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the division has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with the foregoing.

**SECTION 68.** 551.63 (1), (2) and (3) of the statutes are amended to read:

551.63 (1) The division may make, amend and rescind any rules, forms and orders that are necessary to carry out this chapter, including rules and forms governing registration statements, notice filings, applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter or federal statutes or regulations. For the purpose of rules and forms, the division may classify securities, persons and matters within the division's jurisdiction, and prescribe different requirements for different classes. Rules shall be made and published in accordance with ch. 227.

(2) No rule, form or order may be made, amended or rescinded unless the division finds that the action is necessary or appropriate in the public interest and for the protection of investors. In prescribing rules and forms the division may cooperate with the securities administrators of other states and the securities and exchange commission with a view to achieving maximum uniformity in the form and content of registration statements, notice filings, applications and reports wherever practicable.

(3) The Subject to section 15 of the Securities Exchange Act of 1934 and section 222 of the Investment

Advisers Act of 1940, the division may by rule or order prescribe the form and content of financial statements required under this chapter, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices unless otherwise permitted by rule or order.

**SECTION 69.** 551.64 (2) and (3) of the statutes are amended to read:

551.64 (2) The division shall keep a register of all licenses, notice filings and registration statements which are or have ever been effective under this chapter and predecessor laws and all denial, suspension ~~or~~ and revocation orders which have been entered under this chapter and predecessor laws. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, notice filing, application or report shall be made available to the public in accordance with rules adopted by the division.

**SECTION 70.** 551.65 (1) of the statutes is amended to read:

551.65 (1) Every applicant for license or registration under this chapter, every person filing a filing notice under this chapter and every issuer which proposes to offer a security in this state through any person acting as agent shall file with the division or, if applying for a license, with the organization designated by the division under s. 551.32 (1) (a), an irrevocable consent appointing the division to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or a successor, executor or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same validity as if served personally on the person filing the consent. The consent shall be in the form the division by rule prescribes. The consent need not be filed by a person who has filed a consent in connection with a previous registration or notice filing or license which is then in effect. Service may be made by leaving a copy of the process at the office of the division, but it is not effective unless the plaintiff, who may be the division in a suit, action or proceeding instituted by the division, promptly sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the person's last address on file with the division, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, or within such time as the court allows.